IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 468 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MUFIZUDDIN JALALUDDIN SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

1. Special Criminal Application No. 468 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR K.T.DAVE, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

RULE NOT RECD BACK for Respondent No. 3

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 06/10/2001

ORAL JUDGEMENT

In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated December 12, 2000 (Annexure-B to the petition) passed by the Deputy Commissioner of Police, Zone-V Ahmedabad City, Ahmedabad by which he has externed the petitioner for a period of two years from five districts namely Ahmedabad City, Ahmedabad District, Gandhinagar, Kheda and Mehsana and also the order dated February 28, 2001 (Annexure-C to the petition) passed by the appellate authority confirming the order passed by the externing authority and prayed to issue a writ, order or direction quashing and setting both the aforesaid orders.

2. Mr. M.M.Tirmizi, learned Advocate for the petitioner raised the contention that the petitioner was not given due opportunity to defend his case and order was passed ex-parte in the absence of petitioner and therefore on this sole count order of externment is required to be quashed and set aside. He further contended that the said point was also canvassed before the appellate authority but the appellate authority did not consider the said aspect and decided the appeal preferred by the petitioner by rejecting the same. He, therefore, urged that the order which is recorded without giving opportunity to the petitioner is liable to be quashed and set aside. Alternatively, he submitted that the matter may be remanded to the externing authority for deciding afresh after giving ample opportunity to the petitioner to examine his witness, if any.

3. Mr. K.T.Dave, learned APP has no objection if the matter is remanded to the externing authority in view of the fact that the petitioner was not given due opportunity to defend his case and the matter is decided ex-parte.

4. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the order passed by the externing authority as well as the order passed by the appellate authority and other papers annexed to the petition

5. On the facts and in the circumstances emerging from the record of the case and on having perusal of the impugned order dated December 12, 2001, it is stated therein that the petitioner was served with a show-cause notice, however, he has intentionally avoided to remain present before the externing authority for giving his further explanation and, therefore, it was decided to proceed ex-parte.

6. In view of the aforesaid state of affairs, it is seen that the order of externment was passed in the absence of the petitioner and without giving him due opportunity to defend his case by examining the witnesses, the matter is, therefore, required to be remanded to the externing authority for deciding afresh after considering the evidence which may be adduced and produced before it.

7. For the foregoing reasons, petition succeeds and accordingly it is allowed. The impugned orders at Annexure-B and Annexure-C to the petition are quashed and set aside. The matter is remanded to the externing authority for deciding afresh by giving ample opportunity to the petitioner to examine his witness, if any. The externing authority is further directed to issue fresh show-cause notice to the petitioner within a period of one week from the date of receipt of the writ from this Court and to decide the same within a period of six month thereof. Rule is made absolute. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*